

82-1356
No.

Office-Supreme Court, U.S.
FILED

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IN THE
Supreme Court of the United States
OCTOBER TERM, 1982

LEON STEVAS,
CLERK

OPE SHIPPING, LTD.,

Cross Petitioner,

—against—

ALLSTATE INSURANCE COMPANY, INC., UNITED STATES
FIDELITY & GUARANTY COMPANIES, INC., VARIOUS
BRITISH UNDERWRITERS AND UNDERWRITERS AT
LLOYDS,

Cross Respondents.

VADOR SHIPPING, LTD.,

Cross Petitioner,

—against—

ALLSTATE INSURANCE COMPANY, INC., UNITED STATES
FIDELITY & GUARANTY COMPANIES, INC., VARIOUS
BRITISH UNDERWRITERS AND UNDERWRITERS AT
LLOYDS,

Cross Respondents.

AGUA SHIPPING, LTD.,

Cross Petitioner,

—against—

ALLSTATE INSURANCE COMPANY, INC., UNITED STATES
FIDELITY & GUARANTY COMPANIES, INC., VARIOUS
BRITISH UNDERWRITERS AND UNDERWRITERS AT
LLOYDS,

Cross Respondents.

DURAS SHIPPING, LTD.,

Cross Petitioner,

—against—

ALLSTATE INSURANCE COMPANY, INC., UNITED STATES
FIDELITY & GUARANTY COMPANIES, INC., VARIOUS
BRITISH UNDERWRITERS AND UNDERWRITERS AT
LLOYDS,

Cross Respondents.

**CONDITIONAL CROSS PETITION FOR A WRIT OF
CERTIORARI TO THE UNITED STATES COURT
OF APPEALS FOR THE SECOND CIRCUIT**

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Question Presented

Whether loss of the cross petitioners' four commercial ocean going vessels was covered by the policy of marine insurance issued by cross respondents, ALLSTATE INSURANCE COMPANY, INC., UNITED STATES FIDELITY & GUARANTY COMPANIES, INC., and VARIOUS BRITISH UNDERWRITERS, ("MARINE RISK INSURERS").

LIST OF ALL PARTIES

The following are all of the parties to the appeal to the United States Court of Appeals for the Second Circuit:

Plaintiffs-Appellants

OPE SHIPPING, LTD., EL PORVENIR SHIPPING
COMPANY, INC.
VADOR SHIPPING, LTD., CIA. DE NAVEGACION
LA LIBERTAD, S.A.
AGUA SHIPPING, LTD., CIA. DE NAVEGACION
CORINTO, S.A.
DURAS SHIPPING, LTD., MARINA MERCANTE
NICARGUENSE, S.A.

Defendants-Appellees (Marine Risk Underwriters)

ALLSTATE INSURANCE COMPANY, INC.
UNITED STATES FIDELITY & GUARANTY COM-
PANIES, INC.
VARIOUS BRITISH UNDERWRITERS (Stipulated in
the district court to mean John Joseph Taylor and all
other UNDERWRITERS AT LLOYD'S SUBSCRIB-
ING POLICIES OF INSURANCE NOS. 01/145002
AND 01/145003 THROUGH MESSRS. ROBT. BRAD-
FORD HOBBS SAVILL, LTD.)

Defendants-Appellees (War Risk Underwriters)

UNDERWRITERS AT LLOYD'S (Stipulated in the dis-
trict court to mean EDWARD ALAN HERMITAGE and
all other UNDERWRITERS AT LLOYD'S SUBSCRIB-
ING POLICY OF INSURANCE NO. 01/145005
THROUGH MESSRS. ROBT. BRADFORD HOBBS
SAVILL, LTD.)

The cross petitioners have no parent companies, subsidiaries or affiliates.

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IN THE
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Cross Respondents.

CONDITIONAL CROSS PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Cross petitioners ("OWNERS") respectfully pray that this cross petition for a writ of certiorari to the United States Court of Appeals for the Second Circuit be granted if this Court grants the main petition for certiorari filed by petitioners, UNDERWRITERS AT LLOYDS ("WAR RISK INSURERS").

Opinions Below

The opinion of the Second Circuit Court of Appeals is reported as *Ope Shipping, Ltd. v. Allstate Insurance Co., Inc.*, 687 F.2d 639 (2d Cir. 1982) and the opinion of the district court is reported as *Ope Shipping, Ltd. v. All State Insurance Co., Inc.*, 521 F. Supp. 342 (S.D.N.Y. 1981). Both opinions are reproduced in the appendix of the WAR RISK INSURERS' main petition for certiorari as Appendices A and B, pages A1 through A25. There are no other lower court opinions.

Jurisdiction

(i) The court of appeals judgment was dated and entered on August 30, 1982.

(ii) By order dated November 5, 1982, the court of appeals denied the WAR RISK INSURERS' petition for rehearing with suggestion for in banc consideration. By order dated December 14, 1982, the court of appeals denied an application by the WAR RISK INSURERS for permission to file a renewed petition for rehearing with suggestion for in banc consideration. Neither the OWNERS nor the cross/respondent MARINE RISK INSURERS served or filed an application for rehearing in the court of ap-

peals. There have been no orders granting or denying any extensions of time in which to petition or cross petition for certiorari.

(iii) This cross petition is filed in reliance on 1980 R. 19.5. The main petition was received by the OWNERS' attorneys on January 14, 1983.

(iv) The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

The Law Involved

This case does not involve any constitutional provisions, treaties, statutes, ordinances or regulations and neither the petition nor the cross petition raise any issues in that respect.

Statement of the Case

This case arises out of four separate actions brought in the United States District Court for the Southern District of New York by the OWNERS and their assignors to recover the stipulated insured value of four commercial ocean going vessels from various marine and war risk underwriters. Jurisdiction of the district court was based upon the admiralty and maritime nature of the claims within the meaning of 28 U.S.C. 1333 and Fed.R. Civ.P. 9(h). The facts of this matter are succinctly stated by Judge Van Graafeiland in the court of appeals decision. [*App. A, pp. A1-A9*].*

Each of the four vessels was covered by policies of marine and war risk insurance. The marine risk policy insured the vessels against, *inter alia*,

[L]oss due to barratry of the master and mariners and other

*References in this cross petition to "App." are to the lettered appendices included as part of the WAR RISK INSURERS' main petition for certiorari.

like perils, but specifically excluded loss resulting from civil war, revolution, rebellion, insurrection or civil strife arising therefrom, hostilities or warlike operations, whether or not there was a declaration of war.

App. A, p. A4.

The war risk policy:

[C]omplemented the marine risk policy by providing coverage for risks excluded from coverage in the latter policy under the "War, Strike and Related Exclusions" clause.

App. A, p. A5.

Since the marine and war risk policies were complementary, the OWNERS commenced suit in the district court maintaining that the losses must be covered by one or the other policy. *See, App. B, pp. A11-A12.* However, the district court dismissed the actions holding that the losses were not covered by either policy. *App. B, pp. A10-A25.* On appeal, the court of appeals affirmed the dismissal of the actions against the MARINE RISK INSURERS but reversed as to the WAR RISK INSURERS. *App. A, pp. A1-A9.*

Reasons for Granting the Cross Petition

While the OWNERS believe that the decision of the court of appeals is correct, there is a substantial body of law that would hold the MARINE RISK INSURERS liable for the losses. We submit that it would be unjust and prejudicial to the OWNERS if this court were to review the court of appeals decision against the WAR RISK INSURERS without also reviewing the dismissal of the complaints against the MARINE RISK INSURERS.

CONCLUSION

If this Court grants the WAR RISK INSURERS' main petition for certiorari, then this cross petition should be granted as well.

Dated: New York, New York
February 7, 1983

Respectfully submitted,

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CICHANOWICZ & CALLAN

Of Counsel

MAR 14 1983

ALEXANDER L. STEVAS,
CLERKIN THE
Supreme Court of the United States

OCTOBER TERM, 1982

OPE SHIPPING, LTD.,

—against—

*Cross Petitioner,*ALLSTATE INSURANCE COMPANY, INC., UNITED STATES FIDELITY &
GUARANTY COMPANIES, INC., VARIOUS BRITISH UNDERWRITERS AND
UNDERWRITERS AT LLOYDS,*Cross Respondents.*

VADOR SHIPPING, LTD.,

—against—

*Cross Petitioner,*ALLSTATE INSURANCE COMPANY, INC., UNITED STATES FIDELITY &
GUARANTY COMPANIES, INC., VARIOUS BRITISH UNDERWRITERS AND
UNDERWRITERS AT LLOYDS,*Cross Respondents.*

AGUA SHIPPING, LTD.,

—against—

*Cross Petitioner,*ALLSTATE INSURANCE COMPANY, INC., UNITED STATES FIDELITY &
GUARANTY COMPANIES, INC., VARIOUS BRITISH UNDERWRITERS AND
UNDERWRITERS AT LLOYDS,*Cross Respondents.*

DURAS SHIPPING, LTD.,

—against—

*Cross Petitioner,*ALLSTATE INSURANCE COMPANY, INC., UNITED STATES FIDELITY &
GUARANTY COMPANIES, INC., VARIOUS BRITISH UNDERWRITERS AND
UNDERWRITERS AT LLOYDS,*Cross Respondents.***BRIEF IN OPPOSITION TO CONDITIONAL CROSS PETITION FOR
WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SECOND CIRCUIT**

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LIST OF ALL PARTIES

A list of all of the parties to the appeal to the United States Court of Appeals for the Second Circuit is set forth at page i of Cross Petitioners' Brief.*

* The majority of the capital stock in Allstate Insurance Co. is owned by Sears, Roebuck & Co. Allstate Insurance Co. has the following subsidiaries: Allstate Development Corp.; Allstate Indemnity Co.; Allstate Insurance Co. Of Canada; Allstate International, Inc.; Allstate Life Insurance Co.; Allstate Life Insurance Co. Of Canada; Harbridge House, Inc.; Northbrook Indemnity Co.; Northbrook Life Insurance Co.; Northbrook National Insurance; Northbrook Property & Casualty Insurance Co.; PMJ Mortgage Insurance Co. United States Fidelity & Guaranty Company is wholly owned by USF&G Corporation. Various British Underwriters at Lloyd's have no parent companies, subsidiaries or affiliates.

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TABLE OF AUTHORITIES

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BRIEF IN OPPOSITION TO CROSS PETITION FOR CERTIORARI

SUMMARY OF ARGUMENT

Cross respondents, Allstate Insurance Company, Inc., United States Fidelity and Guaranty Companies, Inc. and various British Underwriters and Underwriters at Lloyds ("Marine Risk Underwriters") respectfully pray that the cross petition of Ope Shipping, Ltd., Vador Shipping, Ltd., Duras Shipping, Ltd. and Agua Shipping, Ltd. for a writ of certiorari to the United States Court of Appeals for the Second Circuit be denied.

The decision below was in accord with the applicable law and the cross petition shows no special or important reasons why the writ should issue. Cross petitioners do not show that the Court of Appeals' decision with respect to Marine Risk Underwriters raises any questions of constitutional, treaty or statutory interpretation, that it is in conflict with the laws defined by this Court or by any other forum or that it breaks new ground or should be granted contingent upon the granting of the initial petition for certiorari by the War Risk Underwriters.

STATEMENT OF FACTS

This case arises out of four separate actions brought by cross petitioners in the United States District Court for the Southern District of New York to recover the insured value of four vessels under policies of Marine Insurance and War Risk Insurance.

The facts are set forth in the District Court Opinion (App. B, pp. A11-A22).**

** Reference to "App." are to the lettered appendices included as part of the War Risk Underwriters' petition for writ of certiorari.

Insofar as Marine Risk Underwriters are concerned, the policies of marine (hull) insurance covered "barratry of the Master and Mariners" . . . "excepting, however, such of the foregoing perils as may be excluded by provisions elsewhere in the Policy or by the endorsement thereon". Under the head of **WAR, STRIKES AND RELATED EXCLUSIONS** the policy reads. "This policy does not cover any loss, damage or expense caused by, resulting from or incurred as a consequence of:

(e) civil war, revolution, rebellion, insurrection or civil strife arising therefrom . . ." (App. B, p. A-21).

The District Court found that the loss of the four ships was "incurred as a consequence of civil war" (App. B, p. A-23) and dismissed the actions against Marine Risk Underwriters. On appeal, the Court of Appeals affirmed the decision of the District Court (App. A, pp. A4-A5).

ARGUMENT

I.

THE COURT OF APPEALS' REVIEW WAS PROPER.

The Court of Appeals found that the District Court did not err in holding that the conduct of the crews of the four vessels fell squarely within the exclusions of the marine policy so as to relieve the Marine Risk Underwriters from liability (App. A, p. A5).

The Court of Appeals agreed with the District Court that the conduct of the four crews was a direct result of the Nicaraguan civil war (App. A, A5).

The holding of the District Court denying coverage under the Marine Risk policies and the affirmance of this holding by the Court of Appeals are both in conformity with *Republic of China v. National Union Fire Insurance Co. of Pittsburgh*, 151 F.Supp. 211 (D. Md. 1957), *aff'd in part and rev'd in part*, 254 F.2d 177 (4th Cir. 1958) *cert. denied*, 358 U.S. 823, 79 S.Ct. 38,

3 L.Ed. 2d 64 (1958), as well as following the guidelines of this honorable Court set forth in *Lanasa Fruit Steamship & Importing Co. v. Universal Insurance Co.*, 302 U.S. 556, 565, 58 S.Ct. 371, 375, 82 L.Ed. 422 (1938).

The decision of the Court of Appeals with respect to coverage under the Marine Risk Policies is not in conflict with any decision of another federal court nor with the prior holdings of this honorable Court. There are no special or important reasons requiring review of the decision of the Court of Appeals affirming the dismissal by the District Court of the actions against Marine Risk Underwriters.

II.

THERE IS NO NEED FOR REVIEW OF THE DECISION OF THE COURT OF APPEALS WITH RESPECT TO MARINE RISK UNDERWRITERS EVEN SHOULD THIS HONORABLE COURT GRANT THE PETITION OF WAR RISK UNDERWRITERS.

The questions presented for review by the War Risk Underwriters are confined to the application of exclusionary language contained in the American Institute War Risk Clauses contained in the War Risk Policy (War Risk Underwriters' petition, p. i).

While the War Risk Policy may complement the Marine Risk Policies to a degree, the policies do not present a situation of "either-or".

Should it be determined that one or more of the incidents involved fell within the ambit of the exclusionary language of the War Risk Policy by virtue of detainment or confiscation by the government of the country in which the vessel was owned or registered, such would still not change the application of the exclusion contained in the Marine Risk Policies (App. B, A-21).

CONCLUSION

The conditional cross petition for writ of certiorari to the United States Court of Appeals for the Second Circuit with respect to Marine Risk Underwriters should be denied.

Respectfully submitted,

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